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EUI Firenze Workshop 23/11/2009

**Methods of Legal Regulation and a Study of
Danish Cases 2002-07 concerning Misleading
Presentation of Food**

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Outline

- The FairSpeak Project
- The average consumer benchmark
versus
Food standards /Misuse of terminology rules
- The General Approach of the FairSpeak Project
- Study of Danish Cases 2002-07



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The FairSpeak Project

Collaboration between researchers in the fields of language & cognition, semiotics, visual perception, sensory evaluation, marketing, and law.

Concerns consumers' decoding of food names, claims and other immediate verbal and nonverbal design elements on the product packaging during in-store decision making.

Aims at providing a new, shared frame of reference for producers, consumer organizations and authorities for assessing the impact of in-store food-to-consumer communication from a fairness perspective.

Development of an integrated cross-disciplinary framework for dealing with these issues and operational tools for measuring the misleading potential of individual food naming and labelling solutions on empirical grounds.
(Proactive/preventive approach)



Methods of Legal Regulation of misleading presentation of food

- UCPD without prejudice to Community or national rules relating to the health and safety aspects of products (UCPD art.3,3)
- other Community rules regulating specific aspects of unfair commercial practices shall prevail and apply to those specific aspects in case of conflict with the UCPD (UCPD art. 3.4)
- Regulation 178/2002 laying down the general principles and requirements of food law art. 16 simply states that the presentation ..."shall not mislead consumers"

The average consumer benchmark

- Regulation 178/2002 art. 16 to be understood in a similar way as the UCPD, as far as the benchmark is concerned
- The recitals and provisions of Regulation 1924/2006 on nutrition and health claims made on foods are in accordance with the UCPD, cf. Regulation 1924/2006, recital 16 and art. 5,2.



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Methods of Legal Regulation of misleading presentation of food

Food standards /misuse of terminology

Food standards/food names

e.g. Council Regulation 1234/2007 establishing a common organization of agricultural markets and on specific provisions for certain agricultural products article 114, cf. Annex XIII (defining different categories of “milk”)

e.g Council Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption.

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Methods of Legal Regulation of misleading presentation of food

Food standards /Misuse of Terminology

Regulation 1924/2006 on nutrition and health claims art. 8:

“Nutrition claims shall only be permitted if they are listed in the Annex and are in conformity with the conditions set out in this Regulation.”

Annex (example)

- “REDUCED (NAME OF THE NUTRIENT)

A claim stating that the content in one or more nutrients has been reduced, and any claim likely to have the same meaning for the consumer, may only be made where the reduction in content is at least 30 % compared to a similar product, except for micronutrients where a 10 % difference in the reference values as set in Council Directive 90/496/EEC shall be acceptable and for sodium, or the equivalent value for salt, where a 25 % difference shall be acceptable.”



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The General Approach of the FairSpeak Project

The overall theme:

- How does the in-store product to consumer communication actually work?
- When and how is the presentation of a given food product likely to mislead consumers?

Some of the general questions (from a legal viewpoint)

- How is the average consumer benchmark applied in practice?
Hypothesis: often very rough estimates (guesstimates)
- Is the average consumer benchmark operational if it is taken literally?
How to identify "the reasonably well-informed and reasonably observant and circumspect consumer, taking into account social, cultural and linguistic factors" ?
- How to obtain more precise operational knowledge concerning the average consumer's decoding of food names, claims and other verbal and nonverbal design elements on the product packaging during in-store decision making?
- To what extent are food standards/misuse of terminology a better regulatory method?



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Study of Danish Cases 2002-07 concerning Misleading Presentation of Food

The study was the general starting point of the project aiming at

- identifying conflict scenarios of real-life importance
- establishing a realistic and comprehensive base of examples for identifying essential research questions and formulating specific hypotheses to be operationalized and tested in experiments



Study of Danish Cases 2002-07 concerning Misleading Presentation of Food

- The overall corpus consists of cases concerning misleading presentation of food products registered by the Danish regional food authorities during 2002-2007
- 12.210 cases were identified (from code numbers) as potentially relevant. After a sorting made on basis of the title of the cases, 3.847 were left. These cases were opened, and their contents examined
- 821 cases turned out to concern misleading presentation brought before the food authorities by complainants or initiated by the authorities themselves
- These cases were analysed and registered (parties and authorities involved, food category concerned, legal provisions applied, outcome, etc.) as well as qualitative content by a qualitative categorization of arguments explicitly stated in the case files



***Labelling element allegedly
causing consumers to be
misled***

- brands
- food name
- verbal claims (text)
- mandatory information
- illustrations etc (non-verbal design elements)

***Subject category of the
allegedly unjustified claim
etc (“misled about”)***

- origin
- content
- production process
- ecology & ethics
- sensory
- nutrition & health



***Labelling element allegedly
causing consumers to be
misled***

- brands (5%)
- food name (27%)
- verbal claims (text) (39%)
- mandatory information (21%)
- non-verbal elements (8%)

***Subject category of the
allegedly unjustified claim
etc (misled about”)***

- origin (10%)
- content (48%)
- production process (9%)
- ecology & ethics (4%)
- sensory (3%)
- nutrition & health (26%)



Study of Danish Cases 2002-07 concerning Misleading Presentation of Food Results

Statistically significant correlation between

Labelling element

Subject category

- food name ----- content
- brands ----- origin
- brands ----- ecology& ethics
- verbal claims (text) ----- nutrition & health
- non-verbal elements----- content



Initiator of case

Outcome of case

positive

negative

Individual consumers	46%	29%	19%
Consumer organisations	14%	35%	26%
Competitors	15%	34%	14%
Food authority (ex officio)	15%	-	-
Others	10%	-	-



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Study of Danish Cases 2002-07

Results : Top 2 of allegedly misleading

	<i>design elements</i>	<i>subject category</i>
Total	verbal claim (39%) food name (27%)	content (48%) nutrition & health(26%)
Individual Consumers	verbal claim (35%) mandatory info (30%)	content (52%) nutrition & health(18%)
Consumer Organisations	verbal claim (43%) food name (27%)	content (50%) nutrition & health(28%)
Competitors	verbal claim (49%) food name (28%)	nutrition & health(39%) content (38%)
Ex officio	food name (39%) verbal claim (35%)	content (51%) nutrition & health(29%)



- The categorisations applied in the study do not distinguish between "trivial" and more "subtle" case scenarios of misleading presentation.
- The results indicate that some case scenarios generally are "too subtle" to trigger complaints from consumers feeling misled. This may be due to the fact that it is difficult to verbalize (in a complaint) the effects of non-verbal design elements and the interplay between the different potentially misleading design elements.